IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

MACA.No. 328 of 2003()

OPMV.7/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PALAKKAD
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APPELLANT/RESPONDENT NO.2:

A. MANI @ VELAYUDHAN, AGED 54 YEARS,
S/O. ARU, THACHATTA KALAM,
KANAKKAMPARA, KUNNAMKATTUPATHY VILLAGE,
CHITTUR TALUK, PALAKKAD.

BY ADV. SRI.T.M.CHANDRAN

RESPONDENTS: PETITIONER-RESPONDENT NOS.1,3 & 4:
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1. MANI, S/O. THANKAN,
PADIKKALPADAM VEEDU, PUTHUNAGARAM P.O.,
CHITTUR TALUK.

2. VELUMANI, S/O. VELLA, UPPAMPADY,
THEKKE DESOM VILLAGE, NALLEPULLY P.O.,
CHITTUR TALUK.

3. NEW INDIA ASSURANCE CO.LTD.,
SREEVALLI BUILDING, ATTIKODE,
CHITTUR TALUK.

4. ARUMUGHAN @ KUNCHU, S/O. VELLA,
PARAKKAL VEEDU, KUTTIPPALLAM,
CHITTUR TALUK.

BY ADV. SRI.C.RAGHAVAN
SRI.VPK.PANICKER
SRI.JOSHI VARGHESE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.A.C.A.No. 328 of 2003

Dated this the 2nd August, 2007.

J U D G M E N T

The second respondent, owner, in O.P.(M.V.) No.7/1995, on the file of the Motor Accidents Claims Tribunal, Palakkad, is the appellant. The appeal is filed against the award by which the Tribunal had found that the first respondent in this appeal sustained injury in a motor vehicle accident involving a tractor bearing Registration No.KL-9A 4199, driven by the second respondent, and owned by the appellant, and the applicant is entitled to get an amount of Rs.50,250/= as compensation. The Tribunal also directed the Insurer to deposit the amount, and then to recover it from the appellant, on the ground that the vehicle was driven by a person, who was not holding a valid driving licence.

2. The short facts necessary for the disposal of the appeal are as follows. The first respondent filed an original petition impleading the appellant and respondents 2 and 3, claiming a compensation alleging that he sustained injuries in a motor vehicle accident. It was alleged that while the applicant was riding a bi-cycle,

a Tractor bearing Registration No. KL-9A 4199, driven by the second respondent, came in a rash or negligent manner, and hit against the cycle, causing injuries on him. He claimed a compensation of Rupees One Lakh. The first respondent, driver, did not appear and contest the matter. The appellant filed a written statement denying the averment that accident occurred due to the rash or negligent driving of the vehicle by the second respondent. It was contented that though in the Original Petition, an averment was made to the effect that the vehicle was driven by one Velumani, before the police, he informed that the same was driven by another person by name, Arumugham. The 3rd respondent filed a written statement denying the averments in the Original Petition. It was contented that neither the driver nor the owner informed the insurer about the accident. It was also contented that Chittoor police had registered a case against one Arumughan alias Kunja, for driving the Tractor without valid licence, and since the vehicle was driven by a person who was not having a valid driving licence, the Insurer was not responsible. The 4th respondent did not appear and contest the matter. The Tribunal found that accident occurred due to the negligence of the 4th respondent. It was further found that the applicant was entitled to get a compensation of Rs.50,250/=. The Insurer was directed to pay the amount and to

recover the same from the owner, since the vehicle was driven by a person having no valid licence. Challenging that award, this appeal is filed by the owner of the Tractor.

3. The finding of the Tribunal that the applicant is entitled to get a compensation of Rs.50,250/= is perfectly correct. The nature of the injuries, the treatment undergone etc. fully justifies the quantum of compensation awarded. So, the next question arising for consideration is whether the accident occurred due to the negligence of the first respondent or 4th respondent. If the vehicle was driven by the 4th respondent, Insurer cannot be made liable. The Insurer can be fastened with the liability only if it is established that the vehicle was driven by the first respondent. Regarding that point, the pleadings and evidence are highly unsatisfactory. In the Original Petition, initially the second respondent was impleaded as the driver. In answer to Coloumn No.18, which is meant to give the name and address of the driver, there are two entries, it was written as first respondent, and without striking that sentence, it is again written as 4th respondent. In answer to Coloumn No.28, it is specifically averred that the vehicle was driven by the first respondent. It was also averred that the accident occurred due to rash or negligent driving of

the vehicle of the first respondent. It was further averred that if the first rspondent was little more careful, the accident could not have been avoided. It was also averred in the original petition that Chittoor police had registered a case against the 4th respondent. Apart from making a statement that the police has registered a case against 4th respondent, there is no averment in the Original Petition to the effect that the vehicle was driven by the 4th respondent.

4. In paragraph 4 of the written statement, there is an averment to the effect that the accident occurred due to the negligence of the first respondent, but before the police, the petitioner had given the name of one Arumugham. In paragraph 6, it is very specifically averred that at the time of accident, the vehicle was not driven by the first respondent. In Paragraph 7, it is stated that the case registered against 4th respondent was ended in his acquittal. No where in the written statement, it was averred as to who was the actual driver. The oral evidence adduced is also more confusing. PW.1 in his chief examination has not stated anything about the negligence of any person. But during cross examination by the owner, he has stated that the accident occurred due to the negligence of the 4th respondent. The appellant gave oral evidence as RW.1. He gave

evidence to the effect that the accident occurred due to the negligence of the first respondent. He denied the suggestion that accident occurred due to the negligence of the 4th respondent. So, with the materials on record, it is not possible to fasten the liability either on the second respondent or on the 4th respondent. Hence, I am of the view that it is only just and proper that one more opportunity is given to the parties to establish as to who had driven the vehicle at that time. For that purpose, the case has to go back.

5. In the result, the appeal is allowed in part. The finding of the Tribunal that the applicant is entitled to get a compensation of Rs.50,250/= is confirmed. The finding of the Tribunal that the accident occurred due to the negligent driving of the 4th respondent is set aside. Further direction that the Insurer shall pay the amount recover the same from the first respondent are also set aside. The matter is remanded for the limited purpose of deciding those two issues alone.

6. The Motor Accidents Claims Tribunal, Palakkad, is directed to take O.P.(M.V.) 7/1995 back to file, and dispose of the same afresh, in accordance with law, after affording an opportunity to the parties to place their pleadings or to adduce evidence.

Parties shall appear before the Tribunal on 12.9.2007.

K.PADMANABHAN NAIR,
JUDGE

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